

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DEREK W. CORNELIUS, Plaintiff/Appellant,)	No. ED93081
v.)	Appeal from the Circuit Court
CJ MORRILL, and MORRILL DEVELOPMENT,)	of the City of St. Louis
LLC, Defendants, and)	Honorable Robert H., Dierker, Jr.
CONTREND, INC., Defendant/Respondent.)	Date: December 1, 2009

Plaintiff appeals from a judgment dismissing with prejudice his petition to vacate an arbitration award under section 435.405 RSMo (2000) for failure to state a claim.

AFFIRMED.

Division One Holds:

1. A motion to dismiss based on an affirmative defense may be sustained if the defense is irrefutably established by the petition.
2. The petition alleges facts that show that plaintiff submitted the issue of the enforceability of the contract containing the arbitration clause based on defendant's lack of licensure to the arbitration panel, and it ruled against him. The petition also alleged facts showing that plaintiff initiated the arbitration, participated in it, and obtained an award in his favor. These facts bar plaintiff as a matter of law from pursuing a lawsuit to vacate the award on the ground there was no arbitration agreement.

Opinion by: Kathianne Knaup Crane, P.J.
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

Attorney for Appellant: Matthew A. Rosenberg

Attorney for Respondent: David M. Remley

<p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p>
